IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

WP(C).No. 37170 of 2004(S)

OA.794/2001 OF CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONER:

K.K.CHANDRABOSE, AGED 60 YEARS,
S/O.K.KUNJAN (RETIRED SUB POSTMASTER,
PARAMBIKULAM P.O.), RESIDING AT NO.19/550,
"KAUSTHUBHAM", NEW COLONY, MANKAVU,
PALAKKAD DISTRICT.

BY ADV. SRI.T.C.GOVINDA SWAMY
SMT.D.HEERA

RESPONDENTS:
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1. UNION OF INDIA, REP. BY THE SECRETARY
TO THE GOVERNMENT OF INDIA, MINISTRY OF
COMMUNICATIONS(DEPARTMENT OF POSTS), NEW DELHI.

2. THE MEMBER(PERSONNEL),
POSTAL SERVICES BOARD, DAK BHAVAN,
NEW DELHI-1.

3. THE POSTMASTER GENERAL,
NORTHERN REGION, KERALA CIRCLE,
CALICUT-II.

4. THE DIRECTOR OF POSTAL SERVICES,
NORTHERN REGION, CALICUT-II.

5. THE SENIOR SUPERINTENDENT OF POST
OFFICES, PALAKKAD DIVISION, PALAKKAD-1.

6. THE CHIEF POST MASTER GENERAL,
KERALA CIRCLE, THIRUVANANTHAPURAM.

BY ADV. SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 37170/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE ORDER DT. 30/4/04 IN OA NO. 794/2001 OF CAT.

EXT.P2. COPY OF THE ORIGINAL APPLICATION NO. 794/2001 ALONG WITH ITS ANNEXURES BEFORE THE CAT, ERNAKULAM BENCH.

EXT.P3. COPY OF THE JUDGMENT DT. 7/3/88 IN CRL. APPEAL NO. 73/87, BEFORE THE COURT OF SESSIONS, PALAKKAD DIVISION.

EXT.P4. COPY OF THE REPLY STATEMENT DT. 13/11/2001 FILED BY THE RESPONDENTS IN OA NO. 794/2001.

RESPONDENT'S EXHIBITS NIL.

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K.BALAKRISHNAN NAIR & T.R.RAMACHANDRAN NAIR, JJ.

Writ Petition (C) No.37170 of 2004-S

Judgment

Balakrishnan Nair, J.

The petitioner was a Sub-Postmaster working under the respondents. He was suspended from service on 09.01.1984 as part of the disciplinary proceedings initiated against him. Later, he was reinstated in service on 27.12.1985 without prejudice to the disciplinary proceedings. Still later, the punishment of compulsory retirement from service was imposed on him with effect from 27.03.1986. The petitioner invoked the departmental remedy of appeal. But the appellate authority enhanced the punishment from compulsory retirement to removal from service. He filed a revision before the competent authority. The revisional authority allowed the revision in part and restored the original penalty of compulsory retirement. He challenged the above orders before the CAT by filing OA No.446/91. The said OA was allowed by the CAT by Judgment dated 19.11.1991. The Tribunal ordered that the disciplinary proceedings against the petitioner shall continue from the stage of submission of the report by the enquiry officer. The petitioner was ordered to be reinstated

in service with liberty to the competent authority to keep him under suspension, if found necessary. It was also made clear that the claim for backwages for the period the petitioner was out of service will depend on the final outcome of the disciplinary proceedings.

2. Pursuant to the said Judgment, the petitioner was reinstated in service on 15.01.1992. On the very same day, he was suspended from service. The proceedings against him were completed and again, the punishment of compulsory retirement from service was imposed on him on 31.03.1992. The petitioner preferred an appeal against the said order before the departmental appellate authority. The appeal was allowed by order dated 27.04.1993 and the punishment was reduced to one of reduction of pay to the minimum scale of pay for a period of five years. Pursuant to the said appellate order dated 27.04.1993, the petitioner was reinstated in service on 03.06.1993.

3. The dispute which has to be resolved in this case is regarding how the period the petitioner was under suspension or out of service should be treated. The competent authority after issuing notice and hearing the petitioner, passed Annexure A7 order dated 22.07.1999, which is produced as part of

Ext.P2 OA. The said order was passed under Rule 54 of the Fundamental Rules. It was ordered that for the entire period he was out of service either under suspension or under orders of compulsory retirement, he will get the subsistence allowance after deducting the subsistence allowance already paid to him. It was also ordered that the said period shall be treated as not spent on duty for any purpose. The petitioner filed an appeal against that order, which was dismissed. He also attempted a review. That was also not entertained. So, he challenged Annexure A7 as also the order in appeal and review by filing OA No.794/01 before the CAT. The respondents herein who were the respondents in the OA resisted the prayers in the OA. Upholding their contentions, the OA was dismissed by Ext.P1. So this Writ Petition is filed challenging Ext.P1 and also for a further direction to grant all the reliefs sought in the OA.

4. The respondents have filed a counter affidavit, resisting the prayers in the OP. We heard the learned counsel on both sides. The learned counsel for the petitioner fairly submitted that he will be satisfied if the period during which the petitioner was out of service either by reason of suspension or by compulsory retirement is reckoned for the purpose of grant of pensionary benefits. The learned counsel for the respondents submitted that Rule 54

authorises the competent authority to treat the period as spent not on duty for any purpose and therefore, the order is within jurisdiction.

5. Going by the facts of the case, we notice that the competent authority has ordered to pay subsistence allowance to the petitioner for the entire period he was out of service. If a person is suspended from service and finally, while passing final orders, if it is directed to treat the said period as suspension and that incumbent will be eligible to get only the subsistence allowance, still the said period will be treated as service for all other purposes except for payment of salary. We find that there is no special reason to take a different view in the case of the petitioner to treat the entire period as not spent on duty including the period covered by the suspension order. When an employee is under suspension, the employer-employee relationship continues. When the first order of compulsory retirement was set aside by the CAT, the employer-employee relationship was again restored for the period he was out of service. The same is also the case of the second period during which he was out of service in implementation of the order of compulsory retirement. With the order of the appellate authority reducing the penalty, the employer-employee relationship is again restored with retrospective effect. So, even assuming the

competent authority is empowered to pass an order to treat the said period as not on duty, in relation to pensionary benefits, we feel that the same is unduly harsh and unjust. We find no valid ground in the impugned order to deny the benefit of pensionary benefits for the period he was out of service. In the result, Ext.P1 order of the CAT, to the extent it is challenged, is set aside. We declare that the period from 09.01.1984 to 27.12.1985, 27.03.1986 to 14.01.1992, 15.01.1992 to 30.03.1992 and from 31.03.1992 to 02.06.1993 shall be reckoned as service for the purpose of granting pensionary benefits to the petitioner.

6. The learned counsel for the petitioner raised a grievance that the subsistence allowance ordered to be paid as per Annexure A7 has not so far been released to him after adjusting the amounts already received by him. The competent authority among the respondents will look into the above grievance of the petitioner if he files a representation along with a copy of this Judgment and release the amounts due to him towards subsistence allowance within three months from the date of receipt of a copy of this Judgment. The pensionary benefits of the petitioner if already released, shall be revised taking into account the aforementioned declaration made by this Court within four

months from the date of receipt of a copy of this Judgment.

The Writ Petition is allowed as above.

K.BALAKRISHNAN NAIR,JUDGE

23.10.2007 **T.R.RAMACHANDRAN NAIR, JUDGE**

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